

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

MAR 26 2019

Clerk, U S District Court
District Of Montana
Billings

TRAVIS LORREN GRAY,

Petitioner,

vs.

JAMES SALMONSEN,

Respondent.

CV 18-32-BLG-SPW

ORDER ADOPTING
FINDINGS AND
RECOMMENDATIONS

Petitioner Travis Lorren Gray, appearing pro se, seeks habeas corpus relief pursuant to 28 U.S.C. §2254. Gray challenges certain conditions of his sentence, which restrict his access to the internet via computer or cell phone. (Doc. 6 at 2-3).

Pending before the Court are United States Magistrate Judge Timothy Cavan's findings and recommendations on Gray's petition. (Doc. 8). Judge Cavan recommends this Court dismiss Gray's habeas petition with prejudice because it does not survive deferential review. (Doc. 9 at 4-5). Specifically, Judge Cavan found that Gray's challenge to his sentence involves the interpretation of state law. He further noted that federal habeas corpus relief is unavailable for alleged errors in the interpretation of application of state sentencing laws by either a state trial court or appellate court. (*Id.* at 5). As a result, on federal habeas review, the only question for the court is whether the sentence imposed by the state court is "so

arbitrary or capricious as to constitute an independent” due process violation. (*Id.* quoting *Richmond v. Lewis*, 506 U.S. 40, 50 (1992)). Judge Cavan found that Gray failed to make that showing. (*Id.* at 5). He also found that because the Montana Supreme Court’s denial of Gray’s claims was not objectively unreasonable, this Court must afford deference to that decision under 28 U.S.C. § 2254. (*Id.* at 6). Gray filed a timely objection to the findings and recommendations, entitling him to de novo review. 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(3).

In Gray’s objection, he argues that he is asking this Court to look at the application of state law in “an unconstitutional manor (sic) that specifically targets gay Americans,” not review errors in the interpretation or application of state law. (Doc. 10 at 1). But, as Judge Cavan pointed out, Gray cannot transform his state law issue into one of constitutional import by merely asserting a violation of due process. Judge Cavan concluded Gray failed to make the requisite showing that the sentence imposed upon him is so arbitrary or capricious as to constitute an independent due process violation. This Court agrees.


IT IS ORDERED the proposed findings and recommendations entered by United States Magistrate Judge Cavan (Doc. 9) are ADOPTED IN FULL.

IT IS FURTHER ORDERED Gray’s amended petition (Doc. 6) is DISMISSED with prejudice.

IT IS FURTHER ORDERED the Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

IT IS FURTHER ORDERED a certificate of appealability is DENIED.

DATED this 26th day of March, 2019.


SUSAN P. WATTERS
United States District Judge